IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

OP.No. 3965 of 1998(V)

PETITIONER:

C. PRAKASH CHANDRAN, RETD. DEPUTY COMMISSIONER
OF EXCISE, "BHAIRAVI", T.C.10/2096/1, KANJIRAMPARA,
THIRUVANANTHAPURAM-30.

BY ADV. SRI.C.P.SUDHAKARA PRASAD,ELVIN PETER.P.J
SRI.P.N.SANTHOSH

RESPONDENTS:

---

1. STATE OF KERALA, REP. BY CHIEF SECRETARY TO GOVERNMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE VIGILANCE TRIBUNAL, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ENQUIRY REPORT SUBMITTED BY VIGILANCE TRIBUNAL.

EXT.P2 SHOW CAUSE MEMO DT. 7-8-1992.

EXT.P3 ADVICE DT. 23-11-1993.

EXT.P4 ADVICE DT. 31-12-1994.

EXT.P5 ORDER DT. 3-1-1997.

EXT.P6 REVIEW PETITION DT. 27-2-1997.

EXT.P7 SHOW CAUSE NOTICE DT. 17-11-1997.

EXT.P8 REPLY DT. 2-12-1997.

EXT.P9 ORDER DT.9-1-1998.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

O.P. No. 3965 of 1998

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

Dated this, the 8th January, 2007.

J U D G M E N T

Petitioner is a retired Deputy Commissioner of Excise. He was the Deputy Commissioner of Narakkal Range at the time of the Vypeen Liquor Tragedy. In the prosecution proceedings initiated pursuant to that tragedy, the petitioner was also an accused for accepting bribe from the liquor contractors. However, the prosecution referred his case as a mistake of fact. In spite of the same, the Government decided to initiate disciplinary proceedings against the petitioner. An enquiry was conducted by the Vigilance Tribunal who submitted his report Ext. P1 wherein the petitioner was found guilty. On the basis of Ext.P1 report, Ext. P2 show cause memo was issued to the petitioner for imposition of punishment of compulsory retirement from service on the petitioner. Since the rules prescribe that before imposing punishment on the petitioner, the Kerala Public Service Commission has to be consulted, the matter was referred to the PSC. The PSC, after consideration of the report of the Vigilance Tribunal, came to the conclusion that the finding of the Tribunal was wholly based on the deposition of Mr. M.P. Augustine, who was one of the accused in the Vypeen Liquor Tragedy case convicted and sentenced to undergo 10 years rigorous imprisonment and a find of Rs. 10,000/-. The PSC further noted that all the other witnesses examined by the Vigilance Tribunal to prove the case against the petitioner turned hostile and did not support the version of the said M.P. Augustine. Therefore, the PSC came to the conclusion that the petitioner could not have been found guilty on the tainted testimony of the said Mr. M.P. Augustine and advised that the petitioner be exonerated from the charges levelled against him. The advice of the PSC is contained in Ext. P3. Dissatisfied with the advice of the Commission, the Government again referred the matter to the PSC for re-

consideration. By Ext. P4, the PSC reiterated their earlier advice to exonerate the petitioner.

2. In the meantime, the petitioner retired from service. Therefore, the proposed punishment of compulsory retirement from service could not be imposed on him. However, the Government by Ext. P5 order imposed on the petitioner the punishment of reduction of his pension by 1/3rd permanently under Rule 3 Part III of Kerala Service Rules. Against the same, the petitioner filed Ext. P6 inter alia contending that before issuing that order, the petitioner was not issued any show cause notice. In view of the said contention, the Government issued Ext. P7 show cause notice directing the petitioner to show cause why for the misconduct found to have been proved against him, his pension should not be reduced by 33 1/3% under Rule 3 Part III of KSR as punishment. Despite Ext. P8 objection filed by the petitioner, Ext. P9 order has been passed by the Government imposing on the petitioner the punishment of reduction of pension by 33 1/3% permanently with effect from the date of his retirement. Ext. P1 report of the Vigilance Tribunal and Ext. P9 order of the Government are under challenge in this original petition.

3. The petitioner raises several contentions against the impugned orders. First is that after retirement, there is no employer-employee relationship and going by the Supreme Court decisions on the subject, after severance of the employer-employee relationship, no punishment pursuant to disciplinary proceedings could be imposed on the petitioner. Second is that under Rule 3, reduction of pension can be imposed on the petitioner only if pecuniary loss is caused to the Government on account of the misconduct committed by the delinquent employee. He has also

raised a contention that there is no provision in the Rules to issue a fresh show cause notice after issue of orders. He further contends that in any event, the findings in Ext. P1 as well as in Ext. P9 are perverse in so far as there was no reliable evidence whatsoever before the Vigilance Tribunal to find the petitioner guilty of the misconduct alleged against him.

4. Since I am inclined to allow this original petition on the last ground, I am not going into the questions of law raised by the petitioner.

5. The contention of the petitioner is that the Vigilance Tribunal came to the conclusion that the petitioner was guilty solely on the interested testimony of Mr. M.P. Augustine, who was a notorious criminal responsible for the Vypeen Liquor Tragedy resulting in the death of and personal injury to hundreds of people. He would point out that none of the other witnesses examined by the Vigilance Tribunal, who were employees of the firm in which the said M.P. Augustine was a partner, supported the evidence given by the said M.P. Augustine. He would submit that apart from this interested testimony of M.P. Augustine, there is no evidence whatsoever to show that any money was paid to the petitioner by the said M.P. Augustine. He also would heavily rely on Exts. P3 and P4 advice of the PSC wherein the PSC had specifically advised the Government to exonerate the petitioner. The petitioner therefore submits that in the absence of any reliable evidence to connect the petitioner to the said M.P.Augustine regarding payment of bribe to the petitioner, the finding of the Vigilance Tribunal is totally perverse and unsustainable and therefore Ext. P9 order imposing on the petitioner the punishment of reduction in pension based on Ext. P1 findings of the Vigilance Tribunal is

totally unsustainable and liable to be set aside.

6. Learned Government Pleader would vehemently argue to the contrary. He would submit that the said M.P. Augustine who was examined as PW1 before the Vigilance Tribunal had categorically stated before the Tribunal that he had paid illegal gratification to the petitioner on three occasions. The Tribunal has also relied on the rough cash book maintained by the firm of which Mr. M.P. Augustine was a partner wherein it has been specifically shown that Mr. M.P. Augustine had drawn the amounts on the dates mentioned therein for payment to the petitioner. Learned Government Pleader would submit that although the other witnesses turned hostile and did not corroborate the testimony of the said M.P. Augustine, they had not denied the rough cash book and the contents therein for the purpose of proof in departmental enquiry though conducted by the Vigilance Tribunal. According to the Government Pleader, the fact that the said Sri. M.P. Augustine was convicted and sentenced does not make his evidence unreliable in a disciplinary enquiry. The evidence available is sufficient to find the petitioner guilty, is therefore the submission of the learned Government Pleader.

7. I have considered the rival contentions in detail.

8. Certain facts are not disputed before me. The first is that the said M.P. Augustine has been convicted in the liquor tragedy case and sentenced to undergo rigorous imprisonment for 10 years. It is also not denied that apart from the testimony of Mr. M.P. Augustine to the effect that he had paid amounts to the petitioner, there is no other direct evidence to show that amounts have been paid to the petitioner, although Ext. P4 rough cash book was proved in the enquiry which showed that Mr. M.P. Augustine

had drawn these amounts from the cashier. The evidence to the effect that it was paid to the petitioner is confined to the words of M.P. Augustine alone. In this connection, in paragraph 7.2 of the Tribunal's findings, it has been specifically stated that to a specific question by the prosecution to PW2, Sri. Sasi, who was a cashier of the firm, has answered that the partners used to collect money from the firm on the pretext of paying it to the Excise Officials as illegal gratification. Since I do not have the deposition itself before me, I have to assume that the Tribunal has used the word knowing its true meaning. So, according to the cashier, Mr. M.P. Augustine had taken the money from him on the pretext of paying it to the Excise Officials. Therefore, if M.P. Augustine, in the enquiry, states that he had not paid it to the petitioner, he would certainly land in trouble with the other partners because that would amount to cheating the other partners. Therefore, certainly, the evidence of M.P. Augustine is tainted and interested. In addition to that, the words used by PW2 is that M.P. Augustine took the money on the pretext of paying it to the Excise Officials. As such, even though the proceedings are departmental proceedings where strict rules of evidence may not be strictly applicable, I am not satisfied that the petitioner should be punished on this very interested testimony of a person who has been convicted of a very heinous crime. Further, twice the PSC has given advice to exonerate the petitioner for identical reasons which could not have been brushed aside by the Government without stating any reasons whatsoever as done in Ext. P9. Further, the police who registered the crime against the petitioner had referred the case as a mistake of fact. All these circumstances certainly would go to the aid of the petitioner to show that the findings of the Vigilance Tribunal is perverse. In the

above circumstances, I am satisfied that Ext. P9 order passed on Ext. P1 report of the Vigilance Tribunal is unsustainable and liable to be set aside. I do so. Consequently, the withheld pension of the petitioner would be paid to him within a period of three months from the date of receipt of a copy of this judgment and monthly pension would be continued to be paid to the petitioner without any reduction as ordered in Ext. P9. I once again make it clear that I have not considered the other legal questions raised by the petitioner as recorded by me in the beginning of this judgment against Ext. P9 order, which he would be free to agitate, if necessary, in future proceedings . The original petition is allowed as above.

Sd/- S. Siri Jagan, Judge.

Tds/